IN THE COUNTY COURT OF VICTORIA
AT MELBOURNE
CRIMINAL DIVISION

Revised
Not Restricted
Suitable for Publication

Case No. CR-18-00233

COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS

v

GELA NEWITT

JUDGE:	HIS HONOUR CHIEF JUDGE KIDD
WHERE HELD:	MELBOURNE
DATE OF HEARING:	27 August 2019
DATE OF SENTENCE:	16 December 2019
CASE MAY BE CITED AS:	DPP (Cth) v Newitt
MEDIUM NEUTRAL CITATION:	[2019] VCC 2030

REASONS FOR SENTENCE

Subject:	Criminal law – Sentence.
Catchwords:	Fraud – One charge of obtain financial advantage by deception – Serious example of offence – Offending against and elderly and vulnerable victims – Delay - Advanced age – Good character - Significant burden of imprisonment on offender due to poor health – Excellent prospects of rehabilitation.
Legislation Cited:	*Crimes Act 1958,* s 89; *Sentencing Act 1991*, s 6AAA.
Cases Cited:	*Verdins v The Queen* (2007) 16 VR 269; *R v RLP* (2009) 213 A Crim R 461; *DPP v Bulfin* (1988) 4 VR 114; *R v Pantano* (1990) 49 A Crim R 328.
Sentence:	2 years and 10 months' imprisonment, with all but 10 months suspended for 2 years.

APPEARANCES:	Counsel	Solicitors
For the DDP (Cth)	Ms S Holmes	Andrea Pavleka, Commonwealth Solicitor for Public Prosecutions
For the Accused	Ms E Ruddle	Emma Turnbull Lawyers

HIS HONOUR:

1 **Preliminary**

2 Gela Newitt you have pleaded guilty to one charge of obtain financial advantage by deception[1]. The maximum penalty for this offence is 10 years' imprisonment.

3 At the time of committing the offence you were between 60 and 62 years of age. You are now 71 years old.

4 **Circumstances of the offending**

5 The circumstances of your offending, which occurred between 30 December 2008 and 20 July 2010, are contained in the prosecution opening, which was exhibited on your plea.[2]

6 I act upon the facts as outlined in the opening – which were not disputed by you. I will briefly summarise those circumstances.

7 The setting for this offending is that you, along with your husband Bill Newitt, were involved in the running of a residential service known as Mentone Gardens Supportive Care Home (I shall refer to these as 'Mentone Gardens'), catering to elderly people.

8 Mentone Gardens was operated by Parklane Assets Pty Ltd ('Parklane'), a company that both you and your husband were Directors of during the period of the offending. The two shareholders of Parklane were you and another company, Acacia Falls Pty Ltd ('Acacia Falls'). In turn, you and your husband were the Directors and sole shareholders of Acadia Falls.

9 The victims in this matter were all residents at Mentone Gardens.

1 Contrary to section 82(1) of the *Crimes Act 1958*.
2 Exhibit 1.

10 In late 2008, the first victims, George and Dorothy Wardell expressed an interest in permanently residing at Mentone Gardens, having had some temporary respite there.

11 On 30 December 2008, George Wardell, a financial planner acting for Mr Wardell, yourself and your husband met to discuss the Wardell's entering Mentone Gardens permanently in 2009.

12 During this meeting monthly fees and an accommodation bond were discussed. A bond was agreed to be paid by the Wardells. Further, you and your husband advised the Wardell's financial planner that the bond would be held in a trust account and the interest would reduce the ongoing accommodation fees. Without this assurance, the Wardells would not have made the payment of the bond.

13 On 16 February 2009, the Wardells made their first payment of $55,000, being the first month's accommodation fee (of $5,000) and the first part of the accommodation bond (of $50,000). This was paid into a NAB bank account in the name of Acacia Falls. Prior to this payment, that account had a balance of around $553.

14 The following day, on 17 February, a cheque for $55,000 was written from the Acacia Falls NAB account, signed by you. It was deposited to a NAB bank account in the name of Parklane. The Parklane NAB account was the trading account for Mentone Gardens. Prior to this deposit, this Parklane NAB account was overdrawn by more than $80,000. Then on 18 February 2009 a cheque was written from this account for over $67,000.

15 On 17 March 2009, by email exchange it was agreed between the Wardell's financial planner and your husband that the Wardells would pay a further $150,000 in satisfaction of the accommodation bond. On 25 March, the Wardells signed a cheque for $150,000 in favour Acacia Falls. The following

day, on 26 March, this cheque was deposited into a Bendigo Bank account in the name of Acacia Falls. The deposit slip appears to bear your handwriting. Prior to this deposit, that account had a balance of about $488. The same day, a cheque was written on the Acacia Falls Bendigo Bank account for $150,000 in favour of the Estate of Alma Judd. Your husband Bill Newitt appears to have signed this cheque.

16 In summary, the accommodation bond paid for by the Wardell's was $200,000. Contrary to the representations made to the Wardells, these monies were not held, intact and on trust, but were dissipated shortly after their receipt.

17 Your next victims were Allan and Rose Lorraine. Around October 2009, the Lorraines decided to become long term residents at Mentone Gardens. Allan Lorraine had had some short term respite there and Rose Lorraine was experiencing early stage dementia.

18 It was agreed between you and Allan Lorraine that both he and his wife would pay an accommodation bond of $200,000, being a total of $400,000. You explained to the Lorraines this was a standard payment in the industry and that it was referred to by Mentone Gardens as an 'advance against future fees.'

19 Based upon what Allan Lorraine was told by you and your husband, he understood that the accommodation bond money would be held in tact, in trust and would earn interest that would result in ongoing fees, and would be refunded after departure.

20 On 6 January 2010, Allan Lorraine made out a cheque in favour of Parklane Assets Pty Ltd for $155,000, being $120,000 as the first part-payment of the accommodation bond and $35,000 of accommodation fees. The following day, on 7 January, the cheque was deposited into the Parklane NAB trading

account. Prior to this deposit, this account was overdrawn by over $85,000. Thus, the deposit took this account into credit.

21 Over the following weeks, the remainder of the Lorraine's accommodation bond remained in the Parklane trading account, where cheques continued to be drawn until this account went into overdraft again. By 1 February 2010, it was overdrawn by over $38,000.

22 In mid-2010, the Lorraines sold their family home.

23 On 20 July 2010, Allan Lorraine provided a further payment of about $332, 000. This sum comprised an additional payment of $280,000 as 'advance against future fees' and about $52,000 as ongoing fees. A receipt was provided to Mr Lorraine for the 'Advance Payment' of $400,000 in total indicating that it would be held in the Parklane Assets NAB account. This was the trading account.

24 On 21 July 2010, the Lorraines' cheque for about $332, 000 was deposited into the Parklane Assets NAB account. The deposit slip appears to bear your handwriting. Prior to this deposit, that account was overdrawn by over $58, 000.

25 On 29 July 2010, a letter signed by your husband was provided to the Lorraines, confirming the accommodation bond would remain intact unless otherwise instructed by Mr Lorraine.

26 Again, over the following weeks, the balance of the Lorraine's accommodation bond in the Parklane NAB trading account was dissipated with cheques continuing to be drawn upon the account.

27 In summary, the accommodation bond paid for by the Lorraines' was $400,000. Contrary to the representations made to the Lorraines, these monies were not held intact and on trust, but were dissipated shortly after their

receipt.

28 The accommodation bonds paid by both the Wardells (being $200,000) and the Lorraines (being $400, 000) totalling $600,000 are the subject of the charge of obtain a financial advantage by deception that you have pleaded guilty to.

29 In summary, this charge involved you and your husband obtaining some $600,000 in total from the Wardells and the Lorraines by representing to them that those funds would be held intact, in a trust account, and that interest would be earned from those funds to reduce annual accommodation fees. These representations were false. As is apparent from the above summary of facts, the funds were not held intact at all; they were very quickly dissipated. Your conduct was dishonest.

30 In February 2011, you resigned as a Director of Parklane, however continued to act in that capacity. Around 2012, you told an employee that there was there was no money left, that it had not been held in trust and that you had needed the money to pay bills, wages and deceased resident bonds.

31 By mid-2013, an administrator and then liquidator were appointed, before the Parklane Pty Ltd was wound up on 18 September 2013.

32 None of the bond monies was returned to the Wardells or the Lorraines.

33 **Victim impact**

34 I now turn to the victim impact of your offending, concerning the Wardells and the Lorraines.

35 There were four victims the subject of your offending – George and Dorothy Wardell and Allan and Rose Lorraine.

36 With the exception of Mr Allan Lorraine, your victims are now deceased. Mr

Lorraine declined to provide a victim impact statement. A victim impact statement represents only one way for me to take into account the effect of your offending.

37 The objective circumstances illuminate some of that impact upon each of the victims. While I must not speculate about the consequences, it is self-evident that the impact of a fraud of this nature upon an elderly couple would have been financially de-stabilising and emotionally distressing. This is the only inference available.

38 In relation to the level of care Mr Lorraine received while at Mentone Gardens as managed by you, he has always maintained the service was outstanding. However, this cannot detract from the obvious impact on the Lorraines because of the way you dealt with the accommodation bond monies they had entrusted you with.

39 **Gravity of offending, contextual setting and role in offending**

40 I turn to the gravity of your offending, the contextual setting and role.

41 First, to the gravity of your offending. I agree with the prosecution submission that this was a serious example of this type of offending, for the following reasons:

- It involved a significant sum of money - $600,000;
- It was committed over a reasonably protracted period of time - some 18 months;
- It was committed against four vulnerable victims, who were elderly. Some of the victims also had significant health issues (Mrs Lorraine had early stage dementia). Any loss they suffered was unlikely to be mitigated by the possibility of further income earning because of their age and state in life;

- They placed their trust in you at a vulnerable time in their lives. They provided very substantial sums of money to you, upon the basis that the funds would be held safely held. They were relying upon your help to support them through old age. You breached that trust.

42 In order to fully assess the gravity of your offending and your moral culpability it is necessary to address your personal background, some of the challenges you faced in your life at the time of the offending and what motivated you to engage in this offending. I turn to this now.

43 After leaving school, you trained as a nurse and thereafter worked as a dental nurse.

44 Your first marriage, produced three children. Your youngest daughter Kim passed away at three days old. Your first marriage ended as a result of your first husband's drinking and abuse.

45 In 1985, you married your second husband Bill Newitt, who was an accountant. You purchased your first aged care facility, and then Mentone Gardens. As a registered nurse, you were in charge of client care, staffing and day to day management.

46 For a number of years, you ran both businesses. In 2002, you sold the second aged care facility. In this year, you were diagnosed with spinal canal sterosis. You had wanted to sell Mentone Gardens as well, but your husband did not want to sell. Instead you brought on additional staff.

47 In 2005, you suffered an incident of global amnesia, where you experienced a temporary but total disruption of short term memory.

48 Sadly, your daughter Jodie was diagnosed with breast cancer in 2008. You provided significant care to your daughter and her two young children. Clearly, your caring role had a significant impact on your day to day and working life.

49 A psychiatric report, of your treating psychiatrist, Dr Barbara Kulijewicz dated 6 August 2019, which was tendered on the plea, confirms that you had a long history of recurrent mental health issues, complicated by your unresolved grief issues.

50 Dr Kulijewicz had been treating you since 2005, when you experienced an episode of dissociative amnesia and depressive symptoms. You have had numerous admissions to hospital for treatment of depression and three admissions to hospital following overdoses of medication.

51 Dr Kulijewicz considers that your mental state has fluctuated over the years but your chronic depressive symptoms, grief and sense of loneliness have remained largely unchanged.

52 In responding to whether your conditions had any impact upon, or correlation to, your offending behaviour, Dr Kulijewicz expressed the view, that the combined effect of your mental and physical health issues, with your medical regime, were likely to have impacted on your ability to concentrate and retain information and

> 53 it is likely these *could* have effect on [your] judgment and decision making capacity. [You] seemed to be preoccupied and distracted by the family matters and [your] own health issues to have less interest in business matters and capacity to manage it appropriately.

54 Your counsel conceded that this opinion did 'not go so far as to enliven' *Verdins* principle 1, so as to reduce your moral culpability for the offending. No doubt this is because of the qualified nature of the opinion and the fact that it conflates your physical and mental conditions, together with your preoccupation on family issues.

55 However, I accept that the opinion is relevant in so far as it may provide context and an explanation for your offending.

56 At the time of this offending you would have been under a great deal of stress, in particular because of your daughter's cancer diagnosis. You struggled to manage your conflicting priorities in running the day to day business of Mentone Gardens, while caring for your daughter and granddaughters.

57 Added to this was the chaotic financial circumstances you found yourself in, with a business that was failing. During the period of the offending, the Wardell's and Lorraine's money was used to sustain your financially failing business. Much of the money obtained went to paying down overdraft and debts. You and your husband hoped that eventually you would be in a position to make good the accommodation bonds. In the meantime you found yourself in a spiral of robbing Peter to pay Paul. For example, you used part of the Wardell's bond to refund another resident's bond, to which I have already made reference.

58 This does not provide an excuse for your offending, but it does provide some explanation for your conduct. This was not a fraud motivated by gratuitous greed or the pursuit of a life of luxury. It was aimed at keeping a troubled business afloat.

59 It is also the case that during the charged period your husband, Bill Newitt, had main financial control of the business. Your husband was an accountant and the one experienced in financial matters, while you were a trained nurse focused on ensuring the day to day operations of the facility. I accept that you played a secondary role to Bill Newitt in the offending. You, however, went along with the offending and still played a significant part in it by making representations to the victims, depositing bond monies, and drawing down on those bond funds to pay for business expenses.

60 While you were not personally enriched by this offending, you benefited from the use of the funds to keep Mentone Gardens in operation, a business in which you had an obvious financial interest.

61 **Current mental and physical conditions, age and impact on imprisonment**

62 I turn now to your current mental and physical health conditions and the possible impact of imprisonment upon you.

63 I turn first to the evidence and to your counsel's submissions in relation to your physical and mental health and age. In order to appreciate the force of these submissions I need to outline your personal and medical history.

64 In mid-2012, your husband was becoming increasingly unwell and required your care. By this stage, your daughter required palliative care and passed away in September 2012. After your daughter's tragic death, her husband prevented you from seeing your two young granddaughters. You instigated Family Court proceedings.

65 Your husband was placed into a nursing home in 2013. At this time, you could not cope with running the business, with all of its financial difficulties and an administrator was involved.

66 Mr Newitt passed away in early 2014. This was a very distressing time for you and you attempted suicide. You attempted suicide again when you were charged for this offending.

67 As I have already noted, you are now 71 years of age. At the time of the offending you were in your early 60s.

68 At this stage of your life, your physical health is poor. Currently, you suffer from a number of physical health conditions which impact substantially on your daily needs. Those conditions include spinal canal stenosis, rheumatoid and osteo arthritis and chronic pain, a variety of heart issues including hypertension, mitral regurgitation, rapid atrial fibrillation, chronic cardiac failure, and fibromyalgia. There are other age related illnesses and illnesses

secondary to major conditions including repeated bouts of anaemia and cellulitis.

69 Your health conditions result in significant pain and mobility issues and some are treated with medication including opiate pain killers. You cannot walk unaided. Currently, you live alone in rented accommodation, with a support service providing you with home care multiple days per week, which assists you with day to day activities. You have family support, in particular from your son Robert and your sister Heather, your friend Sue and granddaughters. You require assistance to care for yourself in relation to many daily activities including showering, brushing your hair, dressing or leaving the house. Due to a number of falls you have had, you wear a personal safety alarm.

70 You were recently, indeed during the course of these proceedings, admitted to the emergency department at the Cabrini Hospital for several days because of mild exacerbation of biventricular heart failure, leg cellulitis and other social stressors, which include your inability to cope at home. Only last week, you were admitted to Sunshine Hospital, following an overdose of medications. Yesterday, you were admitted to the Victoria Clinic for treatment of worsening depression. These episodes all bear out the mental and physical health challenges which you face. As I said to Ms Ruddle a moment ago, your recent medical episode does not reflect adversely against you. I take it into account only in the way I have just described.

71 As to your current psychiatric state, Dr Kulijewicz is of the opinion that you present with:

> 72 unabating grief and depressive symptoms characterised by insomnia, low energy, motivation, concentration and memory, anxiety and ruminations about [your] daughter's illness and death, loss of health and function and suicidal ideation, but without intent or plan, with grandchildren being a protective factor.

73 In relation to these conditions, you have been taking anti-depressants and, in the last 6 years, also receiving grief counselling.

74 Dr Kulijewicz opines that your depressive symptoms are usually worse in the morning and your mental health conditions have an impact on your attention, concentration, memory and can affect your judgment and ability to make decisions.

75 When considering the impact of a term of immediate imprisonment would have on you, Dr Kulijewicz was of the opinion that it 'would most likely contribute to the further worsening of her [mental] illness and possibly self-harm.'

76 In order to assist me in determining what would be a just and appropriate sentence in your case, I requested that Corrections Victoria provide information to me as how you could be managed in custody, with all of your health issues and needs.

77 Corrections Victoria provided two affidavits – one of Jennifer Hosking, Acting Assistant Commissioner, deposed on 10 September 2019 and one of Brendan Money, Assistant Commissioner deposed on 30 October 2019 – which I have had regard to.

78 As deposed by Ms Hosking, Corrections regularly and successfully manage prisoners brought into the prison system with chronic health care needs.

79 If you were sentenced to a term of immediate imprisonment, you would be placed at Dame Phyllis Frost Centre (DPFC). Upon reception to DPFC, you would be seen by a GP with a general medical history taken and a mental health screen completed. The medical staff will receive any reports provided by the Court to Corrections and while in custody medical staff can liaise with your community medical practitioners.

80 At DPFC, you would be able to access medical care and treatment. This access is provided through a GP onsite during the week, and onsite 24 hour general health and nursing services, or if required by being transported by ambulance to St Vincent's Hospital.

81 Corrections also provide specialist units at DPFC for prisoners with complex needs, including physical disabilities, and mental health issues. One unit is wheelchair accessible and the shower is fitted with a shower chair.

82 As deposed by Ms Hosking, the primary health and mental health services at DPFC does not include the kind of home care services that Villa Maria Catholic Homes have been providing you with, including personal care and cleaning services.

83 Further while Ms Hosking deposes that DPFC is not a position to provide prisoners with showering, she deposes that a personal carer may be able be engaged to assist with showering and other daily activities, if that is required. Mr Money's affidavit confirms that 'the prison system [would] pay for the pay for private personal carers and cleaners to provide the assessed assistance required.'

84 Your counsel submitted that *Verdins*[3] principle 5 was engaged because your mental health conditions are likely to mean that any sentence of imprisonment will weigh more heavily on you than a person in normal health. The defence have also relied upon your physical disability and immobility in support of the submission that these too will make imprisonment significantly more difficult for you than a person without such challenges.

85 Additionally, your counsel submitted that *Verdins* principle 6 was also engaged because there is a serious risk of imprisonment having a significant adverse effect on your mental, and to some degree your physical, health.

3 *Verdins v The Queen* (2007) 16 VR 269 ('*Verdins*').

86 Reliance is more generally placed upon the fact that you are 71 years of age, in combination with ill health. Further, any term of actual imprisonment will represent a greater proportion of the balance of your life than a younger person. You have never been in trouble before and for the first time, at your age and with your health issues, you are facing the prospect of imprisonment. All of these will be matters which no doubt will weigh heavily upon you. They mitigate the sentence that I would otherwise have impose,[4] under those principles I have just outlined.

87 Your counsel submitted that your experience of imprisonment would be particularly burdensome, and expose you to some personal indignity, for a number of reasons related to your age and ill-health. For example, there is a possibility that your established opiate pain medication regime may be disrupted, at least initially. Until you are assessed upon reception by Corrections Victoria, they cannot confirm what medications you will be prescribed. Further, you are primarily dependent on a wheelchair and you require someone to push you when you are in the wheelchair. Even when not in a wheelchair, you generally need assistance to get around. Your mobility problems mean that you will be more isolated in prison, and reliant on other prisoners to volunteer their assistance. Additionally, you will require assistance with showering, dressing and applying moisturiser to your legs and other daily care activities, to which I have already made reference.

88 In written submissions, your counsel raised a number of matters regarding Corrections' ability to care for you. Your counsel did not explicitly submit that you could not be managed in custody by Corrections. However, the tenor of your counsel's submissions were that Corrections were not equipped to provide the same level of *consistent* care which you currently receive in the community. The emphasis of your counsel's submissions was primarily directed towards the impact that these deficiencies would have on you – that

4 *R v RLP* (2009) 213 A Crim R 461, 476 [39].

you would find a prison environment noticeably more difficult and stressful than other more robust and fully able prisoners.

89 The prosecution submitted that the affidavit material from Corrections demonstrated that Corrections were in a position to appropriately manage you and support your needs in a custodial setting.

90 I am satisfied that Corrections Victoria has the ability to manage your myriad health issues appropriately, including your medication. This may well necessitate Corrections to engage personal carers and cleaners in order to support you.

91 That said, within the prison environment the type of management and care which you will require will be disrupted, and may not be delivered with the same level of continuity and consistency as in the community. The management and care which you will require is likely to lead to some isolation and vulnerability on your part. You will no doubt experience a level of uncertainty and anxiety about your treatment.

92 Having regard to all the evidence presented to me, I have concluded that, even with the best efforts on the part of Corrections, your time in prison will be considerably more difficult than other prisoners, without your physical and mental health issues. I take this matter into account as a weighty matter which mitigates your sentence.

93 Finally, your counsel made a further written submission that if you were to serve a term of immediate imprisonment the pension that you receive from the Department of Veterans Affairs could be suspended or cancelled, and as a result there is a real risk that you will lose your current rented accommodation. This in turn could have the effect of making you homeless upon your release from imprisonment. However, counsel acknowledged that the Department of Veterans' Affairs may offer crisis payments to you upon your release from

custody, although it is not known when such a payment would be made upon your release, or for how much.

94 While the consequences are somewhat speculative, I accept that while you are in custody you will experience some uncertainty and resultant further stress as to what access to housing you would have upon release. The effect of this uncertainty must be viewed in your particular context, with your all of physical and mental health challenges. I take this additional stressor into account in your favour as a mitigating factor.

95 **Plea of guilty and remorse**

96 I turn now to your plea of guilty and remorse.

97 You were arraigned and pleaded guilty to this charge on 15 July 2019. This occurred shortly after a new indictment with a single charge was filed. Prior to this, the matter had been listed for trial, upon the basis of a different indictment comprising four charges. However, at one point in 2018, you had expressed an intention to plead guilty to that earlier indictment. That did not happen. You also ran a two day contested committal.

98 While your plea could not be described as early, you still receive significant credit for the objective utilitarian benefit through the saving of time and resources associated with a trial. As counsel for the prosecution acknowledged, the trial would have been lengthy and involved a large number of witnesses and documentary evidence.

99 When I come to consider your attitude to the offending and your remorse, your counsel submitted that the timing of the plea of guilty, needs to be seen within the broader context of the medical and psychiatric material. In particular, your mental health issues, it was submitted, affected your ability to grasp some parts of the case against you. I will make allowance for this.

100 You have expressed remorse to your family about the loss of the victims' money. You were saddened to lose contact with those residents and wished things had turned out differently. Your entry of the plea of guilty is also representative of some evidence of remorse and a willingness to facilitate the course of justice. You get some credit because of your remorse.

101 **Good character**

102 Your good character. This is the first time, Mrs Newitt, that you have come before the Courts – you do not have any criminal history.

103 For the last 9 years, you have also not committed any further offences.

104 In other words, you are a person who is otherwise of good character.

105 Your good character is also evidenced from the personal references tendered on the plea from your family and friends. They speak to a hardworking, kind and generous person, who was dedicated to ensuring the residents of Mentone Gardens received the best standard of care. I have already noted that one of the victims in this matter also expressed the view that he had received outstanding care from you.

106 These are matters which you can rely on in mitigation of my sentence. They are also relevant to my assessment of your prospects for rehabilitation, which I will return to.

107 **Delay**

108 There has been a significant delay since the end of your offending in July 2010 and today. More specifically there has been substantial delay since the discovery of your offending. You were interviewed by liquidators in 2014. The matter was then referred to ASIC. You were offered to participate in a record of interview in November 2015. Charges were not laid until May 2017.

109 Delay in the prosecution of white-collar crimes is not unusual because these types of crimes may be difficult to detect and investigate, as well as prove.[5] However, it is the effect of the delay upon you which is relevant, rather than whether the delay is explicable, provided, of course, that the delay is not attributable to the conduct of the offender. In this case, the delay cannot be said to have been the result of any of your actions or your fault. The prosecution accepted as much.

110 Delay is relevant in a number of ways in your case.

111 First, the passage of time has resulted a deterioration of your physical health. It also means that in sentencing you today at 71 years of age, you are a person of significantly more advanced years with a corresponding decline in health. Second, while there has been no inordinate delay since you were charged, the fact is the offences were initially detected some six years ago, when the regulators and liquidators became involved. You have been living under the burden of the uncertainty of what might transpire, probably from the moment that the liquidators and regulators became involved in 2014 and certainly since you were invited to be participate in a record of interview in 2015. Fairness requires that the fact that you have been living under this shadow should be taken into account in mitigation. Third, as I mentioned earlier, you have not re-offended during this intervening period since your offending, which I take into account in assessing your prospects of rehabilitation, and the need not to jeopardize your reform.

112 **Prospects of rehabilitation and specific deterrence**

113 On that point, I now turn to your prospects of rehabilitation and the question of specific deterrence.

114 You are someone with excellent prospects of rehabilitation. Given your age and ill-health, along with your demonstrated good character before and after

5 *DPP v Bulfin* (1988) 4 VR 114, 131-132.

this offending, I am confident that you will not re-offend.

115 Further, your offending was situational, driven as it was by a forlorn attempt to save the business. This situation is unlikely to ever arise again.

116 For these reasons, specific deterrence does not have any meaningful role to play in sentencing you today. Nor does the community need to be protected from you now.

117 **General deterrence, denunciation, and just punishment**

118 I turn to the questions of general deterrence, public denunciation and just punishment.

119 The factors which I have identified thus far in your favour must be balanced against the need for my sentence to satisfy the sentencing considerations of general deterrence public denunciation, and just punishment.

120 General deterrence assumes importance in cases like these because of the difficulty in detecting, investigating and prosecuting white collar frauds.[6] My sentence must strongly discourage persons like you, in positions of trust regarding the finances of others, particularly elderly and vulnerable people, from dealing with the money entrusted to them in a dishonest way.

121 Of course sentencing is a balancing exercise, where I must arrive at a just and appropriate sentence which properly reflects your offending and your personal circumstances. Your mental and physical disabilities, which will make prison significantly more burdensome for you, mean that it is necessary to moderate general deterrence when sentencing you. A person in your position is not as appropriate a medium for making an example to others, as white collar offenders who will not experience the same hardship in prison as you will.

122 That all said, denunciation, just punishment and general deterrence remain

6 *R v Pantano* (1990) 49 A Crim R 328, 330.

important sentencing considerations.

123 **Submissions as ultimate sentence**

124 This is a complex sentencing exercise. There are a number of conflicting factors. Some pull in favour of a more severe sentence, others towards a more lenient sentence. By way of example, on the one hand, I must punish for the commission of a serious fraud committed against elderly and vulnerable victims. Yet, on the other hand you yourself are now in a vulnerable position because of the deterioration in your health, and imprisonment will weigh significantly more heavily on you.

125 As this offending occurred between late 2008 and mid 2010 one sentencing option that remains open to me is a suspended sentence of imprisonment (which as a matter of law I may impose in whole or in part).

126 Your counsel made a self-described bold submission that your unique combination of factors meant that I ought to exercise my sentencing discretion to impose a sentence of imprisonment, but wholly suspended. In particular your counsel relied upon your complex health issues and associated care needs, and the significant challenges you will face in prison.

127 The prosecution submitted that despite your mitigating factors only a sentence of immediate imprisonment could adequately address the sentencing purposes. Albeit, the prosecution appeared to accept that a partially suspended sentence of imprisonment would be within the available range.

128 Having carefully considered all the material, I have concluded that the seriousness of the offending requires a component of immediate imprisonment, notwithstanding all of the mitigating features.

129 While I have considered all of your mitigating factors in combination, the great difficulty with which you will endure imprisonment, in particular, has resulted in

me materially moderating your sentence, in particular the component of the sentence which you must immediately serve. It has also influenced my selection of the choice of sanction. I have concluded that it is sufficient in this case that I impose a sentence, a significant portion of which I shall suspend, rather than one which involves a head sentence and non-parole period.

130 **Sentence**

131 I convict and sentence you to 2 years and 10 months' imprisonment.

132 I directed that all but 10 months of the total effective sentence of 34 months' imprisonment be suspended for a period of 24 months.

133 This means you will serve 10 months of actual imprisonment.

134 If, after your release, Mrs Newitt, you were to commit further offending during the two year period of suspension (although I am confident you will not), you should expect to come back to Court for re-sentencing, and you may have to serve the suspended period of imprisonment.

135 **Section 6AAA statement**

136 But for your plea of guilty, I would have imposed a head sentence of 4 years' imprisonment with a 2 year non-parole period.

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